

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	
	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>ARDEN VILLAGE, LLC</b>	)	
	)	
<b>MCGOWAN FAMILY LIMITED</b>	)	
<b>PARTNERSHIP</b>	)	
	)	
<b>REGENT DEVELOPMENT, LLC</b>	)	
	)	
<b>MICHAEL FLOYD</b>	)	
	)	
<b>RESPONDENTS</b>	)	<b>CASE NO. WPC07-0230</b>

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**DIRECTOR’S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the “division”) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

## **II.**

Arden Village LLC, (hereinafter the "Respondent Arden") is a limited liability corporation licensed to conduct business in Tennessee. Respondent Arden is the owner/developer of a commercial and residential development (hereinafter the "site") in Maury County. Service of process may be made on Respondent Arden through its Registered Agent, David C. McGowan Jr., 6026 Nolensville Road, Nashville, Tennessee, 37211.

## **III.**

McGowan Family Limited Partnership, (hereinafter the "Respondent McGowan") is a limited partnership licensed to conduct business in Tennessee. Respondent McGowan is the owner/developer of commercial and residential development activities at the site. Service of process may be made on Respondent McGowan through its Registered Agent, David C. McGowan Jr., 5647 Granny White Pike, Brentwood, Tennessee, 37027.

## **IV.**

Regent Development LLC, (hereinafter the "Respondent Regent") is a limited liability corporation licensed to conduct business in Tennessee. Respondent Regent is the owner/developer of commercial and residential development activities at the site. Service of process may be made on Respondent Regent through its Registered Agent, David C. McGowan Jr., 1524 Fernwood Ct., Brentwood, Tennessee, 37027.

**V.**

Michael Floyd, D/B/A Floyd & Floyd Contractors, (hereinafter "Respondent Floyd") is an individual conducting construction activities at the site. Service of process may be made on Respondent Floyd through, Michael Floyd at 1830 McKinley Joyce Road, Columbia, Tennessee, 38401.

**JURISDICTION**

**VI.**

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) §69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3–4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the

director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

## **VII.**

The Respondents are "persons" as defined by T.C.A. § 69-3-103(20) and, as herein described, have violated the Act.

## **VIII.**

Coleman Branch and its unnamed tributaries as referred to herein, are "waters of the state" as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, "Use Classifications for Surface Waters," Coleman Branch and its unnamed tributaries have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## **IX.**

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the "TNCGP") may be obtained by

submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

## **X.**

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **FACTS**

## **XI.**

On February 15, 2002, Respondent Regent submitted a NOI, SWPPP, and an appropriate fee to obtain coverage under the TNCGP. On February 15, 2002, the division issued the Respondents coverage under the TNCGP. The coverage became effective on February 15, 2002. The permit authorizes the Respondents to discharge storm water runoff associated with construction activity to Coleman Branch, in accordance with the TNCGP terms and conditions.

## **XII.**

On January 30, 2006, Respondent Regent submitted an application for an Aquatic Resource Alteration Permit (ARAP) to relocate 1,640 feet of Coleman Branch on the site. On July 19, 2006, the division issued Aquatic Resource Alteration Permit NRS06.030 to Respondent Regent. The permit became effective on July 19, 2006, and expires July 19, 2011.

## **XIII.**

On November 29, 2006, division personnel conducted a complaint investigation at a property adjacent to the site and observed sediment deposits in Coleman Branch. Further investigation revealed that the Respondents' site was the source of the sediment deposits. Division personnel continued to investigate the site and noted that Erosion Prevention and Sediment Control (EPSC) measures at the site were inadequate and not in accordance with the SWPPP.

## **XIV.**

On December 28, 2006, the division issued Expedited Director's Order (EDO) 06-423D to Respondent Floyd for the violations observed during the November 29, 2006, site visit. Records indicate the division received a payment totaling \$1,750.00 from Respondent Floyd on January 26, 2007.

## **XV.**

On September 14, 2007, division personnel conducted a complaint investigation at the site and observed that Coleman Branch contained large amounts of sediment. EPSC measures on site were in need of maintenance. Division personnel noted large amounts of fine sediment deposits throughout the length of the relocated stream and the original stream channel, some reaches contained sediment several inches deep. The silt fence along the relocated stream had failed in several places and was filled to capacity with sediment in some areas.

## **XVI.**

On September 21, 2007, division personnel met with officials of Respondent Regent on site. Personnel observed that much of the site had been covered with straw, and workers were blowing straw during the visit. Areas where sediment had entered the relocated stream had been cleaned out and new rock had been placed in the channel. Erosion control matting had also been installed on the banks of the relocated stream. The Respondent stated that there were still additional improvements to be made as several sections of silt fence still required maintenance.

## **XVII.**

On September 24, 2007, the division issued a Notice of Violation (NOV) to Respondent Regent and Floyd for violations observed during the September 14, 2007, site visit. In the NOV, division personnel required submittal of the site inspection reports for the month of September and documentation describing actions taken to eliminate the

release of sediment from the site. These were to be submitted to the Columbia Environmental Field Office (C-EFO) at 2484 Park Plus Drive, Columbia, Tennessee, 38401, postmarked no later than 10 days from receipt of the NOV.

#### **XVIII.**

On October 4, 2007, Respondent Regent submitted the requested documentation to the C-EFO. Respondent Regent stated that additional silt fence and check dams had been installed and that work was being done to complete a detention area by the end of the week.

#### **XIX.**

On October 26, 2007, division personnel conducted a compliance visit at the site and observed multiple instances of failing silt fence along the boundary of the site adjacent to the redirected portion of Coleman Branch. EPSC measures at the site were in need of maintenance and sediment was allowed to leave the site and enter Coleman Branch causing a condition of pollution.

#### **XX.**

On November 5, 2007, the division issued a NOV to Respondent Regent and Floyd for the violations observed during the October 26, 2007, site visit. The NOV required the Respondent to submit all inspection documentation for the month of October and to provide a description of actions taken to prevent further sediment from entering the stream or leaving the property. The NOV required the Respondent to submit this



documentation to the C-EFO, postmarked no later than 10 days from the receipt of the NOV.

## **XXI.**

On November 7, 2007, Respondent Regent submitted the documentation requested in the November 5, 2007, NOV.

## **VIOLATIONS**

## **XXII.**

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondents have violated T.C.A. §§ 69-3-108(b), 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

### **XXIII.**

By discharging sediment into waters of the state that resulted in a condition of pollution, the Respondent has violated T.C.A. §§ 69-3-114(a), referenced below, and 69-3-114(b), as referenced above.

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

### **XXIII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115-16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents:

1. The Respondents shall implement appropriate EPSC measures to ensure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented is to be sent within 15 days of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the C-EFO.
2. The Respondents shall maintain professionally designed EPSC measures until final site stabilization.
3. The Respondents shall, within THIRTY (30) DAYS of receipt of this Order and Assessment, submit for division approval a Corrective Action Plan (CAP) for the impacted portions of Coleman Branch. The plan shall include the specific methods proposed to remove the sediment from Coleman Branch. The plan shall be submitted to the manager of the division's C-EFO.
4. The Respondents shall, within THIRTY (30) DAYS of division approval, complete the activities outlined in the approved corrective action plan and notify the manager of the division's C-EFO upon completion.

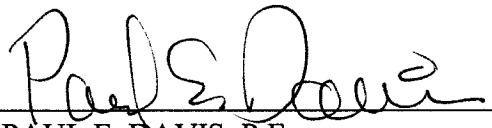
6. The Respondents are hereby assessed a CIVIL PENALTY in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), payable as follows:
- a. The Respondents shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division SIX THOUSAND DOLLARS (\$6,000.00).
  - b. The Respondents shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondents fail to comply with Item 1 above, to be paid within 30 days of default.
  - c. The Respondents shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondents fail to comply with Item 2 above, to be paid within 30 days of default.
  - d. The Respondents shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division in the event the Respondents fail to comply with Item 3 above, to be paid within 30 days of default.
  - e. The Respondents shall pay FOUR THOUSAND DOLLARS (\$4,000.00) to the division in the event the Respondents fail to comply with Item 4 above, to be paid within 30 days of default.
  - f. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request

to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on this 3<sup>rd</sup>  
day of December 2007.

  
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PAUL E. DAVIS, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel

representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to "Treasurer, State of Tennessee," and sent to the Tennessee Department of Environment and Conservation, Division of Fiscal Services – Consolidated Fee Section, 14th Floor L&C Tower, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. All payments and correspondence should include the Respondent's name and case number as shown on the first page of this Order and Assessment.